

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

THE CITY OF URBANA, THE CITY OF)	
CHAMPAIGN, and the COUNTY OF)	
CHAMPAIGN, ILLINOIS, all Municipal)	
Corporations, bodies politic and corporate, in)	
Champaign County, Illinois,)	
Joint Petitioners,)	
v.)	No. T11-0134
)	
ILLINOIS CENTRAL RAILROAD COMPANY,)	
and the ILLINOIS DEPARTMENT OF)	
TRANSPORTATION,)	
Respondents,)	
and)	
)	
PRESERVE OLYMPIAN FARMLAND,)	
Intervenor.)	

Joint Petition for an Order of the Illinois Commerce Commission regarding a separation of grades and an authorization for the construction of a highway bridge over the Illinois Central Railroad Company railroad tracks (MP 124.70) at the tracks' intersection with the Olympian Drive Extension in Champaign County, Illinois, an apportionment of costs thereof, including directing payment to be borne by the Grade Crossing Protection Fund, and other stated or requested relief.

**JOINT PETITIONERS' RESPONSE TO INTERVENOR'S FEBRUARY 13, 2014
PETITION FOR INTERLOCUTORY REVIEW OF HEARING EXAMINER'S RULING**

The Joint Petitioners, by and through their Attorney Jon K. Ellis, state as their response to the Intervenor's February 13, 2014 *Petition for Interlocutory Review of Hearing Examiner's Ruling* the following:

1. On October 20, 2011, the Joint Petition was filed in this case.
2. On December 19, 2013, the Administrative Law Judge ("ALJ") marked this case "Heard and Taken."
3. On January 6 and 7, 2014, Commission Staff, the Joint Petitioners, and the Intervenor filed draft Orders pursuant to Section 200.810 of Subpart E ("Post-Hearing Procedure") of Part 200 of the Commission's Rules of Practice (83 *Ill.Admin. Code* Section 200.820).

4. On January 8, 2014, the ALJ filed a Proposed Order pursuant to Section 200.820 of Subpart E (“Post-Hearing Procedure”) of Part 200 of the Commission’s Rules of Practice (83 *Ill.Admin.Code* Section 200.820).

5. On January 21, 2014, Commission Staff filed its Brief on Exceptions to the Proposed Order pursuant to Section 200.830 of Subpart E (“Post-Hearing Procedure”) of Part 200 of the Commission’s Rules of Practice.

6. On January 22, 2014, the Intervenor filed its Brief on Exceptions and its Exceptions to the Proposed Order pursuant to Section 200.830 of Subpart E (“Post-Hearing Procedure”) of Part 200 of the Commission’s Rules of Practice.

7. On January 29, 2014, the Intervenor filed an *Emergency Motion to Reopen the Case*.

8. On January 30, 2014, the ALJ entered his ruling denying the Intervenor’s *Emergency Motion to Reopen the Case*.

9. On February 13, 2014, the Intervenor filed its third *Petition for Interlocutory Review* pursuant to Section 200.520 (“Interlocutory Review of Hearing Examiner’s Ruling”) of Subpart D (“Hearing Procedure”) of the Commission’s Rules of Practice (83 *Ill.Admin.Code* Section 200.520).

10. Section 200.520 of Subpart D (“Hearing Procedure”) of Part 200 of the Commission’s Rules of Practice provides in pertinent part that:

a) Any ruling by a Hearing Examiner ... may be reviewed by the Commission, but failure to seek immediate review shall not operate as a waiver of any objection to such ruling. Unless good cause is shown or unless otherwise ordered by the Hearing Examiner or the Commission, the party or Staff seeking review of the ruling shall file a petition for interlocutory review within 21 days after the date of the action that is the subject of the petition. * * * **Only in extraordinary circumstances shall an interlocutory review of a ruling of a Hearing Examiner suspend a hearing.** * * * *

11. This “third” Petition for Interlocutory Review is the second one that the Intervenor has filed since this case was marked “Heard and Taken” on December 19, 2013.

12. Since this case is proceeding at this point under Subpart E (“Post-Hearing Procedure”) of Part 200 of the Commission’s Rules of Practice before the full Commission and no longer at the hearing stage before the ALJ, the Intervenor’s most recent Petition for Interlocutory Review is not governed by Section 200.520 (“Interlocutory Review of Hearing Examiner’s Ruling”) of Subpart D.

13. Contrary to the Intervenor’s assertion in its third *Petition for Interlocutory Review*, it was not required or even necessary for any party to file a response to the Intervenor’s Emergency Motion because the ALJ was correct in his ruling that the record of this case contains a clear and complete review and analysis of the local funding issue raised by the Intervenor’s Emergency Motion. This local funding issue was thoroughly presented, examined and reviewed by the ALJ more than once during the more than two years it has taken for this case to be finally marked “Heard and Taken” pursuant to the Commission’s Subpart D hearing procedure.

14. Everything the Intervenor is asking for can be addressed by the full Commission pursuant to Subpart E of its Rules of Practice and should not be sent back to the ALJ. This most recent filing appears to be nothing more than yet another attempt to delay the entry of a final Order in this case.

15. The Intervenor’s February 13, 2014 *Petition for Interlocutory Review* is without reference to material changes in fact or the law, and is also contrary to, and inconsistent with, the determinations and recommendations of the ALJ and the Commission Staff in this case. Therefore, the Intervenor’s assertion that no further action should be taken is without support.

WHEREFORE, based on the foregoing, the Joint Petitioners respectfully request the Commission to enter its Order dismissing the Intervenor’s February 13, 2014 *Petition for Interlocutory Review of Hearing Examiner’s Ruling* and for such other relief deemed just and proper.

Respectfully submitted,

The City of Urbana, The City of Champaign,
and the County of Champaign, Illinois, Joint
Petitioners

By: /s/ Jon K. Ellis

Jon K. Ellis

Attorney for Joint Petitioners

1035 South 2nd Street

Springfield, IL 62704

(217) 528-6835

(217) 528-6837 (facsimile)

jon@jkellislaw.com

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NOTICE OF FILING

TO ATTACHED SERVICE LIST:

PLEASE TAKE NOTICE that the Joint Petitioners have filed a Joint Petitioners' Response to Intervenor's February 13, 2014 Petition for Interlocutory Review of Hearing Examiner's Ruling in the above-captioned Matter with the Illinois Commerce Commission on February 17, 2014. A copy of the aforementioned document has been e-mailed to each of the individuals listed on the attached Certificate of Service.

Respectfully submitted,

The City of Urbana, The City of Champaign,
and the County of Champaign, Illinois, Joint
Petitioners

By: /s/ Jon K. Ellis

Jon K. Ellis
Attorney for Joint Petitioners
1035 South 2nd Street
Springfield, IL 62704
(217) 528-6835
(217) 528-6837 (facsimile)
jon@jkellislaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that service of the foregoing Joint Petitioners' Response to Intervenor's February 13, 2014 Petition for Interlocutory Review of Hearing Examiner's Ruling was made, in addition to electronic filing with the Illinois Commerce Commission, by e-mailing a true and accurate copy thereof to:

Joseph VonDeBur
Railroad Safety Specialist
Transportation - Railroad
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62701
jvondebu@icc.illinois.gov

Don Gerard
Mayor, City of Champaign
102 North Neil Street
Champaign, Illinois 61820-4018
MayorGerard@ci.champaign.il.us

Lance T. Jones
Deputy Chief Counsel
Illinois Department of Transportation
2300 South Dirksen Parkway
Suite 313
Springfield, Illinois 62764
lance.jones@illinois.gov

Edward D. McNamara, Jr.
Joseph H. O'Brien
McNamara & Evans
931 South 4th Street
P.O. Box 5039
Springfield, Illinois 62705
mcnamara.evans@gmail.com

Christine Reed
ATTN: Jason Johnson
2300 South Dirksen Parkway
Springfield, Illinois 62764
jason.johnson@illinois.gov

James Simon
City Attorney
City of Urbana Legal Division
400 South Vine Street
Urbana, Illinois 61801
jlsimon@urbanailinois.us

Arne Skrodal
Signal Planning Engineer
CN/Illinois Central Railroad Company
17641 South Ashland Avenue
Homewood, Illinois 60430-1345
arne.skrodal@cn.ca

Jennifer R. Kuntz
Assistant Chief Counsel
Illinois Department of Transportation
2300 South Dirksen Parkway
Springfield, Illinois 62764
jennifer.kuntz@illinois.gov

Laurel Prussing
Mayor, City of Urbana
400 South Vine Street
Urbana, Illinois 61801-0219
jaross@urbanailinois.us

Thomas J. Healey
Counsel - Regulatory
CN/Illinois Central Railroad Company
17641 South Ashland Avenue
Homewood, Illinois 60430
tom.healey@cn.ca

Patrick Jones
Manager, Public Works
CN/Illinois Central Railroad
17641 South Ashland Avenue
Homewood, Illinois 60430
patrick.jones@cn.ca

Joseph E. Hooker
Assistant City Attorney
City of Champaign
182 North Neil Street
Champaign, Illinois 61820
joseph.hooker@ci.champaign.il.us

Todd Ferguson
Signal Designer
CN/Illinois Central Railroad Company
17641 South Ashland Avenue
Homewood, Illinois 60430
todd.ferguson@cn.ca

Jeff Blue
Champaign County Highway Engineer
Brookens Administrative Center
1605 East Main Street
Urbana, Illinois 61802
jblue@co.champaign.il.us

Paul A. Chojenski
CN/Illinois Central Railroad Company
17641 South Ashland Avenue
Homewood, Illinois 60430
paul.chojenski@cn.ca

Michael Forti
Illinois Department of Transportation
2300 South Dirksen Parkway
Springfield, Illinois 62764
michael.forti@illinois.gov

to each of their respective e-mail addresses listed above, on February 17, 2014.

/s/ Jon K. Ellis
Jon K. Ellis